

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2508**

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**Introduced by Assembly Member Fox**

February 21, 2014

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An act to amend ~~Sections 592 and 1171 of~~ *Section 431.40 of, and add Section 1170.1 to,* the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 2508, as amended, Fox. Unlawful detainer: ~~trial by jury pleadings.~~

*Existing law provides that in any action in which the demand, exclusive of interest, or the value of the property in controversy does not exceed \$1,000, the defendant, in lieu of demurrer or other answer, may file a general written denial and a brief statement of any new matter constituting a defense.*

*This bill would exempt specified actions for unlawful detainer from these provisions.*

*Existing law provides that a tenant of real property for a term less than life who continues in possession of the property without permission, after the expiration of the term for which it is let, or after default in the payment of rent, as specified, is guilty of unlawful detainer. Existing law authorizes a defendant tenant to assert certain affirmative defenses in an unlawful detainer action for a residential property, including that the property is untenable because it substantially lacks specified affirmative standard characteristics or that the lessor has failed to repair dilapidations, as specified.*

*This bill would require, in an unlawful detainer action for default in payment of rent for a residential property in which specified affirmative*

*defenses are asserted, that a defendant set forth and allege specified facts in support of those affirmative defenses in the defendant's answer to the complaint, as specified. The bill would require the Judicial Council to create a form, on or before July 1, 2016, that may be used by a defendant to assert the facts required by the bill to assert those affirmative defenses to an unlawful detainer action. The bill would delay the operative date of its provisions, other than the requirement that the Judicial Council to create a form, until July 1, 2016.*

~~Existing law governs unlawful detainer proceedings, including a requirement that courts give such actions scheduling preference over other civil actions so that the matter may be quickly heard and determined. Existing law requires that an unlawful detainer action be tried by a jury, unless waived by the parties, whenever an issue of fact is presented in the pleadings.~~

~~This bill would require specified unlawful detainer actions that present a question of fact in the pleadings to be tried by the court. The bill would require that the court's determination be subject to de novo review by the superior court upon appeal. The bill would require the appeal to be tried by jury, unless waived.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 431.40 of the Code of Civil Procedure is
- 2     amended to read:
- 3     431.40. (a) Any provision of law to the contrary
- 4     notwithstanding, in any action in which the demand, exclusive of
- 5     interest, or the value of the property in controversy does not exceed
- 6     one thousand dollars (\$1000), the defendant at his option, in lieu
- 7     of demurrer or other answer, may file a general written denial and
- 8     a brief statement of any new matter constituting a defense.
- 9     (b) Nothing in this section excuses the defendant from
- 10    complying with the provisions of law applicable to a
- 11    cross-complaint, and any cross-complaint of the defendant shall
- 12    be subject to the requirements applicable in any other action.
- 13    (c) The general written denial described in subdivision (a) shall
- 14    be on a blank available at the place of filing and shall be in a form
- 15    prescribed by the Judicial Council. This form need not be verified.

1     (d) *This section does not apply to an action for unlawful detainer*  
2 *brought pursuant to Section 1161.*

3     SEC. 2. *Section 1170.1 is added to the Code of Civil Procedure,*  
4 *to read:*

5     1170.1. (a) *This section applies in any unlawful detainer action*  
6 *brought pursuant to Section 1161 for default in payment of rent*  
7 *for a residential property in which the defendant asserts one or*  
8 *more of the following affirmative defenses in his or her answer:*

9         (1) *Breach of the warranty of habitability.*

10        (2) *The defendant exercised the repair and deduct remedy, and*  
11 *the plaintiff did not give proper credit.*

12        (3) *The defendant tendered rent prior to the expiration of the*  
13 *notice, and the plaintiff did not accept it.*

14     (b) *To assert an affirmative defense set forth in subdivision (a)*  
15 *the defendant shall allege facts applicable to that affirmative*  
16 *defense, as follows:*

17         (1) *With respect to the breach of the warranty of habitability,*  
18 *for each requirement of habitability that the plaintiff failed to*  
19 *provide, the answer shall allege facts demonstrating all of the*  
20 *following:*

21            (A) *The specific nature of the failed requirement.*

22            (B) *Facts demonstrating the failure to be substantial.*

23            (C) *The date on which the condition occurred.*

24         (2) *With respect to use of the repair and deduct remedy, the*  
25 *answer shall allege facts demonstrating all of the following:*

26            (A) *The habitability requirement that the plaintiff substantially*  
27 *failed to provide.*

28            (B) *The date on which notice was provided to the plaintiff of*  
29 *the condition that required repair.*

30            (C) *The circumstances under which a reasonable time for the*  
31 *plaintiff to perform the repair was fewer than 30 days.*

32            (D) *The amount of money the defendant spent to make the repair.*

33            (E) *The date notice was given to the plaintiff of the defendant's*  
34 *expenditure.*

35            (F) *The month for which the plaintiff failed to provide credit*  
36 *against rent for the expenditure.*

37            (G) *A statement that the defendant has not exercised the right*  
38 *to repair and deduct more than once within the 12-month period*  
39 *before the month for which the cost of the repair was deducted*  
40 *from the rent.*

1     (3) *With respect to the defense that rent was tendered before*  
2 *the expiration of the notice and was not accepted, the answer shall*  
3 *allege facts demonstrating all of the following:*

4     (A) *That after service of the three-day notice, but before the*  
5 *three-day period expired, the defendant presented the full amount*  
6 *of rent to the plaintiff.*

7     (B) *That the plaintiff refused to accept the payment.*

8     (C) *The form of the payment tendered.*

9     (c) *In addition to the facts specified in subdivision (b), the*  
10 *defendant shall include one of the following statements in the*  
11 *answer:*

12     (1) *A statement that, at the time of filing the answer, the*  
13 *defendant has funds sufficient to satisfy the judgment sought by*  
14 *the plaintiff and whether those funds will be retained pending the*  
15 *outcome of the action.*

16     (2) *A statement that, at the time of filing the answer, the*  
17 *defendant does not have sufficient funds available to satisfy a*  
18 *judgment in the plaintiff's favor and an explanation of why those*  
19 *funds are not available.*

20     (d) *The supporting facts and statements described in*  
21 *subdivisions (b) and (c) of this section shall be included and*  
22 *verified by the defendant in a form prescribed by the Judicial*  
23 *Council that is available at the place of filing.*

24     (e) *The Judicial Council shall, on or before July 1, 2016, develop*  
25 *a new form or revise an existing form that may be used by a*  
26 *defendant to assert the affirmative defenses and supporting facts*  
27 *set forth in this section to an unlawful detainer action.*

28     (f) *Subdivisions (a) to (d), inclusive, of this section shall become*  
29 *operative on July 1, 2016.*

30     ~~SECTION 1. Section 592 of the Code of Civil Procedure is~~  
31 ~~amended to read:~~

32     ~~592. —(a) In actions for the recovery of specific, real, or~~  
33 ~~personal property, with or without damages, or for money claimed~~  
34 ~~as due upon contract, or as damages for breach of contract, or for~~  
35 ~~injuries, an issue of fact shall be tried by a jury unless a jury trial~~  
36 ~~is waived, or a reference is ordered, as provided in this Code.~~  
37 ~~Where in these cases there are issues both of law and fact, the issue~~  
38 ~~of law must be first disposed of. In other cases, issues of fact must~~  
39 ~~be tried by the Court, subject to its power to order any such issue~~

1 to be tried by a jury, or to be referred to a referee, as provided in  
2 this Code.

3 (b) ~~Notwithstanding subdivision (a), an unlawful detainer action~~  
4 ~~filed pursuant to Chapter 4 (commencing with Section 1159) of~~  
5 ~~Title 3 of Part 3 is not be subject to this section and shall be tried~~  
6 ~~by jury as prescribed in Section 1171.~~

7 SEC. 2. ~~Section 1171 of the Code of Civil Procedure is~~  
8 ~~amended to read:~~

9 1171. (a) ~~Except as provided in subdivision (b), an action that~~  
10 ~~presents an issue of fact shall be initially tried by the court, without~~  
11 ~~a jury. The court's determination shall be subject to appeal in the~~  
12 ~~superior court of the county in which the complaint is filed, and~~  
13 ~~shall be tried de novo by a jury, unless a jury trial is waived.~~

14 (b) (1) ~~An action that presents an issue of fact shall be tried by~~  
15 ~~a jury in the first instance, unless a jury trial is waived, if either of~~  
16 ~~the following apply:~~

17 (A) ~~The amount of the damages claimed exceeds ten thousand~~  
18 ~~dollars (\$10,000).~~

19 (B) ~~The action pertains to a written lease that has an unexpired~~  
20 ~~term of 30 days or more at the time the complaint is filed.~~

21 (2) ~~The jury shall be formed in the same manner as other trial~~  
22 ~~juries in an action of the same jurisdictional classification in the~~  
23 ~~Court in which the action is pending.~~